15590

No. ~~15590~~

# COURT OF APPEALS

## for the Ninth Circuit

WILLIA NIUKKANEN, also known as WILLIAM NIUKKANEN, also known as WILLIAM ALBERT MACKIE,

*Appellant,*

vs.

E. D. McALEXANDER, Acting District Director, Immigration and Naturalization Service, Department of Justice,

*Appellee.*

## REPLY BRIEF OF APPELLANT

*Appeal from the United States District Court for the District of Oregon.*



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## REPLY TO APPELLEE'S SUMMARY AND ARGUMENT

Throughout its brief, the government stresses the testimony given by its informers Knipe and Wilmot that appellant attended a number of meetings held under auspices of the Communist Party. It also seizes upon some vague references in this testimony to appellant's

presumed role as someone "annointed" and in the "top fraction" of the Communist Party. Nowhere does the government refer to meaningful explanations of these generalizations. The record is devoid of testimony as to what these condemnatory terms are supposed to mean when used by these government informers.

Certainly the government has failed to produce from such testimony a picture of appellant being a "politically aware" member of the Communist Party. Even if it is granted for the sake of argument that appellant attended Communist meetings, under the *Rowoldt* doctrine, more is required to provide a basis for deportation. Some political motivation, some evidence of knowledge and approval of Communist political ideology and aims there must be before the harsh penalty of deportation can be imposed.

If *Rowoldt* teaches anything, it is that attendance of Communist meetings and even payment of party dues is insufficient to justify the inference of political awareness. And when the government's case is searched for substantial evidence that appellant had a politically aware association with communism, one can only conclude that in fact the opposite is true: that appellant's whole course of activity during the depression years was motivated solely by a desire to improve his economic situation, to obtain unemployment compensation and relief. Such an economic motive for membership in the Communist Party excused Rowoldt. It likewise should relieve appellant from being deported to a strange and alien land.

Appellee asserts that the facts in this case are almost identical to those in *Schleich v. Butterfield,* 252 F2d 191, 356 US 971. However, Schleich was accused by the two government informers who testified against him of being an active organizer and recruiter of members for the Young Communist League and the Communist Party. Moreover, these witnesses also said that Schleich attended high level conferences of party leaders to report on his important assignments. The testimony in the case at bar certainly does not go this far.

It is significant that the Supreme Court in the Schleich case caused the record to be returned to the Immigration Service to be used in a hearing on Schleich's contention that he is not deportable under *Rowoldt.* At the same time, the Supreme Court retained jurisdiction of the cause in case of a decision adverse to Schleich. Thus, Schleich receives a hearing on the very issues on which appellant has requested a new hearing.

If due process requires a new hearing for Schleich, does it not also require a new hearing for appellant if it is true, as the government asserts, that the cases are similar?

## CONCLUSION

The judgment of the District Court should be reversed and the warrant of deportation quashed and held for nought; or, at least, the Immigration Service should be required to hold a new hearing to receive evidence on the question of the nature of appellant's alleged association with the Communist Party.

Respectfully submitted,

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